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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 308

MAXINE MURRAY, ON HER OWN BEHALF AND AS GUARDIAN AD LITEM OF MAXINE LOIS MURRAY, A MINOR, PETITIONERS,

vs.

JOE GERRICK & COMPANY, INDUSTRIAL BROWN HOIST CORPORATION, R. W. KALTENBACH CORPORATION, F. W. CORNING, IRVING GOTTHEIM, AND MAX BLOOMENSTEIN, RESPONDENTS.

To the Honorables the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, Maxine Murray on her own behalf and as guardian *ad litem* of Maxine Lois Murray, a minor, pray that a writ of certiorari issue to review a final judgment of the Supreme Court of the State of Washington entered in this cause on the 12th day of May, 1933, affirming the judgment of the Superior Court of the State of Washington for Kitsap County dismissing the above entitled action.

Jurisdiction.

The final judgment below was entered May 12, 1933, in the Supreme Court of the State of Washington, a court of

last resort. The jurisdiction of this Court is provided by Sec. 237(*b*) of the Judicial Code as amended by the Act of February 13, 1925 (45 Stat. 936).

Statement.

It is admitted that Louis Henry Murray was killed through the negligence of the respondents while working for them in the construction of a steel traveling tower crane within the limits of the Puget Sound Navy Yard at Bremerton, Washington. This action was brought by Maxine Murray as widow of the said Louis Henry Murray and as guardian *ad litem* of their child, Maxine Lois Murray, to recover damages therefor (R. 1.)

The decedent entered into a contract of employment with the respondents on the 17th day of June, 1932, at Seattle, Washington, as a structural steel worker at a wage of $1.10 per hour, time to start when he left Seattle and to continue until he returned, and on said date commenced to work for the respondents upon a 20-ton steel traveling tower crane within the Puget Sound Navy Yard at Bremerton, Washington, and, while so engaged, on the 21st day of June, 1932, he fell from said crane a distance of about 25 feet, fracturing and crushing his skull and otherwise seriously damaging and injuring his body, from which injuries he died at Bremerton, Washington, on the 22nd day of June, 1932, leaving the petitioner Maxine Murray, his widow, and the petitioner Maxine Lois Murray, his only child, a minor three years of age, surviving (R. 2). Two hours of each day's work was performed by the decedent under his said contract outside of the limits of the Puget Sound Navy Yard in traveling from Seattle to Bremerton and return. All the allegations of petitioners' amended complaint stand admitted by the demurrers (R. 13-18).

Under the laws of the State of Washington at the time at which the lands within the limits of the Puget Sound Navy Yard were ceded to the United States Government by and with the consent of the State of Washington given by a legislative act passed and approved in the year 1891 (Laws 1891, p. 31; Remington's Comp. Stat., Sec. 8108), the petitioners had a right to bring this action and were the proper parties to bring the action, besides being the real parties in interest and the sole heirs and beneficiaries of said decedent to whom any amount recovered for his death must be paid. Sec. 8 of the Code of 1881 (Sec. 183 Remington & Ballinger's Ann. Code of the State of Washington), the law in force at the time the territory within the limits of the Puget Sound Navy Yard at Bremerton, Washington, was ceded to the United States Government, reads:

> "When the death of a person is caused by the wrongful act or neglect of another, his *heirs* or personal representatives may maintain an action for damages against the person causing the death."

This law has forever since remained in force within the limits of the Puget Sound Navy Yard, unless changed by an Act of Congress.

In 1917 the legislature of the State of Washington passed an act which reads:

> "When the death of a person is caused by the wrongful act, neglect or default of another, his *personal representative* may maintain an action for damages against the person causing the death" (Sec. 1, Act of 1917, Chap. 123, p. 495).

This act, passed by the legislature of the State of Washington after the lands within the Puget Sound Navy Yard had been ceded to the United States Government, did not and

could not have the effect of changing said Sec. 183 of Remington & Ballinger's Ann. Code in any manner as it was then in effect within the limits of the Navy Yard.

In 1927 the legislature of the State of Washington passed a law amending the State Workmen's Compensation Act by providing that whenever an employer is in default in the payment of any premium, the defaulting employer "shall be liable to suit by the injured workman (or his beneficiaries and dependents), at his or their option, as he would have been on March 14, 1911." (See Appendix "A".) On March 14, 1911 said Sec. 183 of Remington & Ballinger's Ann. Code was in full force, the same as it was when the lands within the Puget Sound Navy Yard were ceded to the United States Government. The amended complaint alleged that respondents were in default (R. 17).

On February 1, 1928, an Act of Congress was passed, entitled:

> "An Act Concerning Actions on Account of Death or personal Injury Within Places Under the Exclusive Jurisdiction of the United States." It reads:
>
> "Action for Death or Personal Injury Within National Park or Other Place under Jurisdiction of United States; Application of State Laws.—In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the States within the exerior boundaries of which it may be" (Feb. 1, 1928, c. 15, 45 Stat. 54, Title 16 U. S. Code Ann., 1931 Supp., Sec. 457).

Demurrers were interposed by respondents to the petitioners' complaint (R. 8, 10) and also to their amended complaint (R. 19-21). The trial court filed a memorandum opinion (R. 21) sustaining the respondents' demurrers to petitioners' amended complaint on the grounds:

1st. That any cause of action arising on account of the death of the said decedent must be brought by the personal representative of the deceased and that the petitioners had no legal capacity to sue;

2nd. That the Act of Congress of February 1, 1928 did not make any of the laws of the State of Washington Workmen's Compensation Act apply in this case (R. 22).

The petitioners gave notice of their election to stand upon their amended complaint, whereupon the trial court ordered the action dismissed (R. 22). The judgment of dismissal was affirmed by the Supreme Court of the State of Washington (R. 25). A petition for rehearing was filed (R. 30), which was denied by the Supreme Court of the State of Washington and judgment entered on May 12, 1933 affirming the judgment of the trial court dismissing the action (R. 30).

Pleadings.

Petitioners' complaint and amended complaint appear in full at pp. 1 and 11 of the record.

Opinions Below.

Trial Court (R. 21).

Supreme Court of the State of Washington (R. 25).

Questions Presented.

1. Did the Act of Congress of February 1, 1928 take from the petitioners the right to bring and prosecute this action

in their own right as the sole heirs, beneficiaries and real parties in interest of the decedent to recover damages on account of the negligence of the respondents which caused his death, and to whom all moneys recovered therefor must be paid?

2. (*a*) Does the Act of Congress of February 1, 1928 make the laws of the State within whose limits territory ceded to the United States lies apply in an action to recover damages for death or personal injury caused by the negligent act of another within a national park or other reservation under the exclusive jurisdiction of the United States?

(*b*) Was the purpose of the Act of Congress of February 1, 1928 to give to workmen working for independent contractors upon structures or projects within the limits of United States navy yards or other government reservations the benefits provided under the State workmen's compensation acts and the right to recover for injuries sustained that the United States Employees' Compensation Act gave to employees of the United States Government, while working together upon the same structures or projects? The Government got the benefit of the workmen's services in both cases, whether it paid therefor to the independent contractor or direct to its own employees. Both the lower courts held that the Act of Congress of February 1, 1928 did not make State workmen's compensation acts in force at the time of the passage of the Act apply in this case (R. 21, 25).

3. Did the laws of the State of Washington and the Act of Congress of February 1, 1928, become a part of the contract of employment entered into by the decedent at Seattle, Washington, with the respondents on June 17, 1932

and determine the substantive rights and obligations of the parties; and, if so, is such right protected by the Constitution of the United States?

Specification of Errors to be Urged.

The trial court, affirmed by the Supreme Court of the State of Washington, committed error as follows:

1st. In holding and deciding that the petitioners were not the proper parties plaintiff and were without legal capacity to sue—notwithstanding that they were the sole heirs, beneficiaries and real parties in interest, to whom all moneys recovered from respondents on account of the death of the decedent must be paid.

2nd. In holding and deciding that the Act of Congress of February 1, 1928, did not make any of the provisions of the laws of the State of Washington, known as the Workmen's Compensation Act, apply in this case.

3rd. In holding and deciding that the Act of Congress of February 1, 1928, took away from the petitioners the right to bring and prosecute this action in their own right as sole heirs and beneficiaries of the decedent.

4th. In holding and deciding that the Act of Congress of February 1, 1928, did not give to the petitioners any rights additional to those which they already possessed prior to the passage of the said Act of Congress, but, in fact, took away the right which they theretofore had to bring an action in their own names as heirs of the decedent.

5th. In sustaining respondents' demurrers to petitioners' amended complaint.

6th. In rendering judgment of dismissal and in dismissing petitioners' action.

7th. In refusing to grant petitioners' request that the petitioner Maxine Murray (who was also the widow, the personal representative of the decedent and the administratrix of his estate) be made a party plaintiff as such personal representative in this action (R. 30).

Reasons for Granting the Writ.

I.

The Supreme Court of the State of Washington has decided a number of questions of federal law of great public importance in a way which is either in conflict with applicable decisions of this Court, or else have not been, but ought to be, authoritatively decided by this Court in the public interest. The Supreme Court of the State of Washington held as follows:

1. That the Act of Congress of February 1, 1928, did not make the laws of the State of Washington in force at the time of the passage of said Act apply in an action brought by an injured workman (or, in case of his death, by his widow and children, his sole heirs and beneficiaries) caused by the negligence of an independent contractor, his employer, while working within the limits of the United States Navy Yard at Bremerton, Washington.

2. That the Act of Congress of February 1, 1928, did not give to an injured workman, while employed by an independent contractor within the limits of a United States navy yard or reservation (or, in case of his death, to his heirs and beneficiaries) any rights greater than he possessed and had prior to the passage of said Act; but that it took away from the petitioners the right to prosecute an action on their own behalf, as the sole heirs and bene-

ficiaries of the decedent, which right they had prior to the passage of said Act of February 1, 1928.

II.

The Act of Congress of February 1, 1928, has never been construed by this Court or any other court than the Supreme Court of the State of Washington in this action, which ruling in effect destroys the rights, privileges and benefits intended by Congress to be conferred upon workmen employed by independent contractors upon Government projects within United States navy yards and other Government reservations, to whom no protection has heretofore been given by either the States within which the reservations lie or the United States, all of which is of great national interest and public concern.

III.

The trial court and the Supreme Court of the State of Washington failed to recognize the substantive rights which the decedent and his heirs had under his contract of hire with the respondents, namely: the laws of the place where the contract was entered into, which became a part of the contract.

WHEREFORE it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Supreme Court of the State of Washington should be granted.

WM. MARTIN,
Attorney for Petitioners.

Seattle, Washington, July 22, 1933.

STATE OF WASHINGTON,
County of King, ss:

WM. MARTIN, being duly sworn, says:

That he is Attorney for petitioners herein and that the foregoing petition is true to the best of his knowledge, information and belief.

WM. MARTIN.

Sworn to before me this 22d day of July, 1933.
[SEAL.] H. A. MARTIN.

I hereby certify that I have examined the foregoing petition, that in my opinion it is well founded and entitled to the favorable consideration of the court, and that it is not filed for the purpose of delay.

WM. MARTIN.

BRIEF IN SUPPORT OF PETITION.

ARGUMENT.

Petitioners Were the Proper Parties to Bring this Action.

The facts stated in petitioners' complaint and amended complaint stand admitted by the demurrers. That the laws of the State governing actions to recover damages for injuries and death occurring within the limits of a United States navy yard or other Government reservation under the exclusive jurisdiction of the United States are the laws in force at the time the territory was ceded to the United States is tersely stated by Judge Cardozo in the case of *Kaufman* v. *Hopper,* 115 N. E. 470 (N. Y.), in the following language:

> "The common law and statutes passed before the act of cession remain in force in the ceded territory until displaced by Congress (*McCarthy* v. *Packard Co.,* 105 App. Div. 436, 94 N. Y. Supp. 203 Affirmed on opinion below, 182 N. Y. 555, 75 N. E. 1130; *Barrett* v. *Palmer,* 135 N. Y. 336, 31 N. E. 1017, 17 L. R. A. 720, 31 Am. St. Rep. 835). But later statutes are of no effect. This is now the settled rule (*Farley* v. *Schermo,* 208 N. Y. 269; *Ft. Leavenworth R. R. Co.* v. *Lowe,* 114 U. S. 525, 537; *W. U. Tel. Co.* v. *Chiles,* 214 U. S. 274).

Petitioners were likewise the proper parties to bring this action under Chap. 310 Laws of the State of Washington, 1927, p. 829. This law was brought into effect by the Act of Congress of February 1, 1928. It provides that an employer before commencing any work shall notify the Director of Labor and Industries of such fact and shall

accompany such notification with an estimate of the first month's payroll, together with his check for the payment of the premium on such estimated payroll; and, in case of his failure so to do and an injury happens during such period of default or, if such employer shall be in default for failure to furnish the Department with an estimated payroll, such employer shall not be entitled to the benefits of the act, but shall be liable to suit by the injured workman or his beneficiaries and dependents at his or their option, as he would have been on March 14, 1911. At that time Sec. 183 of Remington & Ballinger's Ann. Code was in full force and effect, which provided for the bringing of this action as brought by petitioners. (See Appendix "A".)

These facts were alleged by petitioners in Paragraphs X, XI, and XII of their amended complaint (R. 17, 18).

In this case the petitioners were the real parties in interest, the sole heirs and beneficiaries to whom whatever amount was recovered (whether recovered by the petitioners in their own right or by the personal representative of the decedent) would have had to be turned over to petitioners. In the case of *Bixler* v. *Pennsylvania R. Co.*, 201 Fed. 553, an action brought by Isaac P. Bixler and Hermina E. Bixler, his wife, against the railroad company to recover for the death of their son who was killed while in the employ of the railroad company and engaged in interstate traffic, so that the action came under the Employers' Liability Act (Act of Congress April 22, 1908, 35 Stat. 65 (U. S. Comp. St. Supp. 1911, p. 1322) requiring the action to be brought by the personal representative, the court said:

> "'This statute is a remedial one, enacted for the purpose of compelling those who negligently cause the death of persons to compensate the surviving husband, widow, or next of kin of the person so killed,

and, like all such statutes, should be so construed as to give, instead of withholding, the remedy intended to be provided. *Lamphear* v. *Buckingham*, 33 Conn. 237; *Haggerty* v. *Central R. R. Co.*, 31 N. J. Law, 349. The important portion of the section is that which gives a right of action, and not that part which provides who may enforce it. The latter is an incidental provision.' *Lang* v. *Houston, etc., R. Co.*, 75 Hun. 151, 27 N. Y. Supp. 90, affirmed 144 N. Y. 717, 39 N. E. 858."

citing *Stewart* v. *Baltimore & Ohio Railroad Co.*, 168 U. S. 445-449, 18 Sup. Ct. 105, 42 L. Ed. 537.

The petitioner Maxine Murray is the duly and regularly appointed administratrix of the estate of her said husband and his personal representative as well, and permission should have been granted by the lower courts that she be allowed to appear as plaintiff in this action in such capacity (R. 30).

Missouri, K. & T. R. Co. v. *Wulf*, 226 U. S. 570-78; 57 L. Ed. 355; same case in lower court, 192 Fed. 919.

The judgment of the lower court, therefore, in any event should be reversed and permission granted petitioners to substitute Maxine Murray as the personal representative and administratrix of the decedent, Louis Henry Murray, and the action continued and prosecuted by her as plaintiff in such capacity.

The Act of Congress of February 1, 1928, Applies in this Case.

The lower courts committed error in holding and deciding that the Act of Congress of February 1, 1928, did not make any of the provisions of the laws of the State of Washington known as the Workmen's Compensation Act apply in this case.

The Federal Act is clear. It says that the "rights of the parties shall be governed by the laws of the State" within which the accident occurred and "such right of action shall exist as though the place where it occurred was under the jurisdiction of the State." Language could not well be used to bring the laws of the State into effect and govern the rights of the parties to this suit more clearly than this statute has. The Act is remedial in its effect. It is elementary that the Act should be given a liberal construction in order that its benefits be extended fully to those for whom it was passed. Thousands of civilian workmen, citizens and residents of the states, work within the navy yards for independent contractors having contracts with the Government for construction work and other improvements within the navy yards. Such workmen do not come under the United States Employees' Compensation Act for the reason that they are not in the employment of the Government, but of the independent contractor; so that, in case of death or injury, the workman and his dependents in many cases were left without redress or a remedy. There was therefore a very great necessity for the passage of the Act of February 1, 1928, making the Workmen's Compensation Acts of the States within which such work is performed apply, so that an injured workman and his dependents in case of his death would be entitled to compensation under the State workmen's compensation acts while in the employment of an independent contractor doing work for the Government, as he would have been entitled to receive under the United States Employees' Compensation Act had he been in the employment of the Government instead of the independent contractor.

It is the petitioners' contention that this statute makes all the laws of the State of Washington applicable to the

petitioners' case the same as would have applied had the accident happened outside the boundaries of the navy yard. This is the clear purpose and intent of the Act.

It is well settled that statutes of a State may be adopted by reference by Congress in its enactment. The U. S. Supreme Court in the case of *Engel* v. *Davenport*, 271 U. S. 33, 70 L. Ed. 813-817, states the rule as follows:

> "The adoption of an earlier statute by reference makes it as much a part of the later act as though it had been incorporated at full length. *Kendall* v. *United States*, 12 Pet. 524, 625, 9 L. Ed. 1181, 1221; *Re Heath*, 144 U. S. 92, 94, 36 L. Ed. 358, 359, 12 Sup. Ct. Rep. 615; *Interstate Consol. Street R. Co.* v. *Massachusetts*, 207 U. S. 79, 85, 52 L. Ed. 111, 114, 28 Sup. Ct. Rep. 26, 12 Ann. Cas. 555. It brings into the later act 'all that is fairly covered by the reference' (*Panama R. Co. Case*, 264 U. S. 392, 68 L. Ed. 755, 44 Sup. Ct. Rep. 391); that is to say, all the provisions of the former act which, from the nature of the subject-matter, are applicable to the later act."

It is clear, therefore, that when Congress passed the Act of February 1, 1928, it brought into effect all of the laws of the State of Washington pertaining to the action brought to recover thereunder for the death of the decedent Louis Henry Murray. It must also be conceded that the laws brought into effect by the Act of February 1, 1928, were additional to the laws of the State of Washington already in force in the ceded territory—that is, within the bounds of the Puget Sound Navy Yard. Otherwise, the Act of February 1, 1928, would have no effect whatever. It would be meaningless. To give the Act the construction given it by the lower court would render it of no effect whatever, as the petitioners had all the rights under the law as it existed prior to the passage of the Act of February 1, 1928,

that they now have under the decision of the lower court in this case.

The laws of the State of Washington governing the relationship between master and servant, generally spoken of as the Workmen's Compensation Act, do not only provide for compensation for injuries, but provide as it were a code of laws for the recovery by the workman from his employer damages for injuries which he receives through the owner's negligence in certain respects and under certain conditions apart entirely from the compensation provisions, and provide who may bring the suit to recover such damages and to whom the damages recovered therefor shall belong. In speaking of our Workmen's Compensation Act, the Supreme Court of the State of Washington in the case of *State* v. *Cowlitz County*, 146 Wash. 309, uses the following language:

> "This, being an act relating to the compensation of injured workmen, is comprehensive enough to include all manner of compensation for such workmen and all the means by which such compensation may be obtained. The title does not indicate that the only compensation provided for is that which is obtained through industrial insurance, although we popularly speak of the act as an industrial insurance act. The act provides for compensation by industrial insurance in certain cases, and also provides for the obtaining of compensation by injured workmen from their employers by legal action, and in the section to which we are now confining our attention, provides, among other things, the defenses available to such employers."

The Washington State Workmen's Compensation Act was passed in the year 1911 (Ch. 74, Session Laws of the State of Washington, 1911, p. 345, Remington & Ballinger's Ann. Code, 1913 Supp., Sections 6604-1 to 6604-32, Remington's Comp. Stat. of Washington, Sections 7673-7796 and

1927 Supp., Sections 7673-7796-2). The act is a complete code and, as stated by the Supreme Court above, not only provides for compensation for injured workmen through industrial insurance, but also provides for the obtaining of compensation by injured workmen from their employers by legal action and provides, among other things, the defenses available in actions at law to recover for such injuries.

Under decedent's contract of hire, two hours of each day of his time was put in outside of the limits of the Navy Yard, so that the Workmen's Compensation Act of the State of Washington would apply irrespective of the Act of February 1, 1928, under decedent's said contract of hire.

The Act of Congress of February 1, 1928, and the Laws of the State of Washington, including the provisions of the Workmen's Compensation Act, became a part of the contract of employment in this case.

The provisions of the 1927 amendment to the Workmen's Compensation Act of the State of Washington, together with the provisions of the act and the Act of Congress of February 1, 1928, apply to this case for the reason that they were in full force and effect at the time at which the decedent entered into his contract of hire with the respondents and became a part of his contract of employment. This is a well settled rule. The rule is announced by the Supreme Court of the State of Washington in the case of *Thorp* v. *Department of Labor & Industries,* 145 Wash. 498, in which that court quotes and approves this rule as announced by the Supreme Court of Connecticut in the case of *Quilty* v. *Connecticut Company,* 96 Conn. 124, 113 Atl. 149, as follows:

> "The right to compensation arises from the contractual relation between the employer and the em-

ployee existing at the time of the injury, and the statute then in force in relation to compensation formed a part of the contract of employment, and determined the substantive rights and obligations of the parties.

"The obligations of the employer to dependents of an employee in case of the death of an injured employee are equally substantive obligations, and are also fixed and determined by the statute in force at the time of the injury."

Conclusions.

It is accordingly submitted that the decision of the Supreme Court of the State of Washington in this case is incorrect in the following respects:

(*a*) In that it defeats the great purpose which Congress had in passing the Act of February 1, 1928: to enable those injured (and their dependents) to recover and be remunerated therefor when injured through the neglect of another within a Government reservation by and under the laws of the respective States in which such reservations were situated.

(*b*) In depriving the petitioners the right granted by the provisions of the Workmen's Compensation Act of the State of Washington to be remunerated and to recover thereunder for the damages sustained on account of the negligence of the respondents.

(*c*) In holding that the petitioner Maxine Murray, the widow of the decedent, was not (in suing in her own right) a proper party plaintiff, and in refusing her request to be designated a party plaintiff as administratrix of the estate of said decedent as well.

The case is a proper one for review by this Court.

WM. MARTIN,
Attorney for Petitioners.

APPENDIX "A".

Laws of Washington, 1927, Ch. 310.

"* * * Every employer * * * shall, before so commencing or resuming operations, as the case may be, notify the director of labor and industries of such fact, accompanying such notification with an estimate of his payroll for the first calendar month of his proposed operations, and shall make payment of the premium on such estimated payroll" (P. 829).

"* * * In respect to any injury happening to any of his workmen during the period such employer shall be in default in the payment of any premium, if such default be after demand for payment, or if such employer shall be in default for failure to furnish the department with an estimated payroll or with monthly reports of his payroll as required under section 7676 of Remington's Compiled Statutes, the defaulting employer shall not be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or his beneficiaries and dependents), at his or their option, as would have been on March 14th, 1911, and in any action brought against such employer, it shall be no defense for such employer to show that such injury was caused in whole or in part by the negligence of a fellow servant of the injured workman, that the negligence of the injured workman, other than his wilful act committed for the purpose of sustaining the injury, contributed to the accident, or that the injured workman had knowledge of the danger or assumed the risk which resulted in his injury" (Pp. 831-32).